

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE SULFURIC ACID	:	MDL Docket No. 1536
ANTITRUST LITIGATION	:	Case No. 03 C 4576
	:	
This Document Relates To:	:	Honorable Chief Judge James F. Holderman
	:	
<u>ALL RELATED ACTIONS</u>	:	Magistrate Judge Jeffrey Cole

**DEFENDANTS' RULE 16 MOTION TO SIMPLIFY ISSUES
WITH RESPECT TO THE RULE OF REASON TRIAL**

On November 29, 2011, the Court held that the rule of reason mode of antitrust analysis will apply at trial. (Dkt. 766.) Since the outset of this case, however, Plaintiffs have consistently and unequivocally stated their election to proceed only with a *per se* case and not develop an analysis of Defendants' conduct under the rule of reason. Based upon this election, Plaintiffs have neither the facts nor expert testimony to support a rule of reason case at trial. Indeed, as recently as November 14, 2011, Plaintiffs unambiguously represented to the Court that "[they] and their experts are not proceeding on a 'rule of reason' theory in this case." (Dkt. 751 at 5.)

Pursuant to Federal Rule of Civil Procedure 16(c), Defendants Noranda Inc., Falconbridge Limited, NorFalco LLC, Koch Sulfur Products Company, Koch Sulfur Products Company LLC, Intertrade Holdings, Inc. and Pressure Vessel Services, Inc. ("Defendants"), now respectfully request that the Court find that Plaintiffs do not have evidence to proceed to trial under the rule of reason standard and/or are precluded from doing so. Additionally, to the extent that the Court deems appropriate, Defendants request leave pursuant to Rule 16(c)(2)(E) to file a motion for summary judgment in order to dispose of the case in its entirety. The grounds for this motion are set forth in the accompany memorandum of law.

Dated: December 8, 2011

Respectfully submitted:

/s/ David C. Gustman

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Counsel for Noranda Inc., Falconbridge Limited, and NorFalco LLC, and all remaining non-settling defendants for purposes of this motion only.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all counsel of record via the Northern District of Illinois, Eastern Division, ECF filing system, this 8th day of December, 2011.

/s/ David C. Gustman
Attorney for Noranda, Inc., Falconbridge
Limited and NorFalco LLC